

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

KAREN BARKES individually; TINA  
GROSSMAN as next  
friend of BRITTANY BARKES; TINA  
GROSSMAN as next friend of ALEXANDRA  
BARKES; and KAREN BARKES as administratrix  
of the ESTATE OF CHRISTOPHER BARKES,

Plaintiffs,

v.

FIRST CORRECTIONAL MEDICAL,  
INC.; STANLEY TAYLOR; RAPHAEL  
WILLIAMS; CERTAIN UNKNOWN  
INDIVIDUAL EMPLOYEES OF THE STATE OF  
DELAWARE DEPARTMENT OF  
CORRECTION; CERTAIN UNKNOWN  
INDIVIDUAL EMPLOYEES  
OF FIRST CORRECTIONAL MEDICAL,  
INC.; and STATE OF DELAWARE  
DEPARTMENT OF CORRECTION,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

**COMPLAINT**

**Parties**

1. Plaintiff Karen Barkes individually is, and at all times relevant hereto was, a resident of Wilmington, Delaware, and was the wife of decedent Christopher Barkes (who is hereinafter sometimes referred to as "Mr. Barkes") at the time of the death of Christopher Barkes.

2. Plaintiff Tina Grossman is the mother and next friend of Brittany A. Barkes (hereinafter sometimes referred to as "Brittany," date of birth August 30, 1989) and Alexandra

M. Barkes (hereinafter sometimes referred to as “Alexandra,” date of birth March 9, 1993), who are the children of Christopher Barkes.

3. Plaintiff Karen Barkes as Administratrix of the Estate of Christopher Barkes has been appointed Administratrix of the Estate of Christopher Barkes by the New Castle County Register of Wills.

4. Defendant Stanley Taylor is the Commissioner of Correction for the State of Delaware, and in that capacity is the Chief Officer of the Department of Correction (the department will hereinafter sometimes be referred to as the “DOC.”

5. Defendant Raphael Williams is and was at all times relevant hereto the Warden of the Howard R. Young Correctional Institution (which was formerly often referred to as “Gander Hill,” and which will hereinafter be referred to as “HRYCI”).

6. Defendants, unknown individual employees of the DOC, were, on information and belief, involved in the care and custody of Christopher Barkes, either directly or indirectly by virtue of their obligations to properly administer such care and custody, at relevant times hereto.

7. Defendant, State of Delaware Department of Correction, is a subdivision of the State of Delaware.

8. Defendant, First Correctional Medical, Inc. (hereinafter sometimes referred to as “FCM”), is, on information and belief, a corporation responsible, at all times relevant hereto, for the performance of medical services within HRYCI pursuant to a contract with the State of Delaware.

9. Defendants, unknown individual employees of FCM, were, on information and belief, involved in the care and custody of Christopher Barkes, either directly or indirectly by virtue of their obligations to properly administer such care and custody, at relevant times hereto.

### **Jurisdiction**

10. The United States District Court for the District of Delaware has jurisdiction over the parties and the claims by virtue of the pendency of a federal claim under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 1343, and under the principles of ancillary and pendent jurisdiction as well as the supplemental jurisdiction provisions of 28 U.S.C. § 1367.

### **Facts**

11. Christopher Barkes, whose date of birth was December 12, 1966, was found to have committed suicide at age 37 on or about November 14, 2004, while incarcerated at HRYCI.

12. Seven years prior to his suicide, in 1997, Mr. Barkes was involved in an automobile accident while under the influence of alcohol, which accident resulted in the deaths of two other involved parties.

13. As a result of his involvement in the aforesaid motor vehicle accident, Mr. Barkes pleaded guilty to two counts of vehicular homicide and was sentenced to two years in prison to be followed by an extended period of probation.

14. Mr. Barkes was deeply impacted by the tragic auto accident identified above; psychological reports relating to his frame of mind, generated as a result of treatment he received in the years after the vehicular homicide, indicate that he was wracked with extreme guilt over the deaths that had resulted from the accident, and he had been diagnosed as suffering from post-traumatic stress disorder resulting from that accident.

15. As a result of the post-traumatic stress disorder and related guilt, depression, and anxiety, certain alcohol and drug problems of Mr. Barkes were exacerbated, and in November of 2003 he attempted suicide by overdosing on pills, although he survived.

16. On information and belief, Mr. Barkes attempted suicide on at least one other occasion while incarcerated at HRYCI.

17. In February of 2004, as part of a sentencing order related to, *inter alia*, certain violations of his probation, Mr. Barkes was ordered as follows by the Family Court of the State of Delaware: to continue certain psychiatric day treatment services he was obtaining from Psychotherapeutic Services, Inc.; to attend at least five meetings of Alcoholics Anonymous per week; to be evaluated for emotional and/or psychological problems; and to take such mental health medication as was prescribed.

18. On September 10, 2004 while receiving care at Chrisitana Care Hospital, Mr. Barkes tried to kill himself using his IV tubing. Mr. Barkes' probation officers were notified.

19. On November 13, 2004 Christopher Barkes was incarcerated at HRYCI for loitering, in violation of his probation.

20. During the initial intake of Christopher Barkes, on November 13, 2004, employees of defendant FCM noted that Christopher Barkes took the following medications: Depakote XR, Seroquel and Effexor XR, whose clinical use is to treat depression and bipolar disorder.

21. Christopher Barkes was not given any of the above-listed medications by FCM personnel on November 13, 2004 or thereafter.

22. The intake form prepared at the time of Mr. Barkes' entry into HRYCI, which was signed by a member of the FCM intake nursing staff, was checked "yes" next to the inquiry, "Have you ever attempted suicide?"

23. The initial period of any incarceration is often a critical time for detecting potential suicides, as noted in the Program Statement of the United States Bureau of Prisons relating to suicide prevention.

24. Upon information and belief, instead of double-bunking Christopher Barkes (which is to say, housing him with a cellmate) or placing him in a suicide watch cell or "Ram room", Christopher Barkes was housed alone in cell F-122.

25. With regard to incarcerated individuals who have a history of suicidal ideation and are believed to be suicidal, the National Commission on Correctional Health Care ("NCCHC") calls for double-bunking and constant supervision.

26. Upon information and belief, Christopher Barkes was not placed under constant supervision nor was his status checked at regularly-scheduled intervals sufficient to prevent his suicide.

27. Upon information and belief, defendants either made provision to Christopher Barkes, or authorized the provision to Christopher Barkes, or failed to prevent the provision to Christopher Barkes, of bedding (such as bed sheets and linens) and/or other items that could be used by a suicidal inmate to harm himself.

28. Upon information and belief, at approximately 11:40 a.m. on November 14, 2004, Christopher Barkes was found unconscious in his cell by prison officials, who determined that he had hung himself with bedsheets.

29. Prison officials and/or FCM personnel attempted to revive Christopher Barkes unsuccessfully.

30. Christopher Barkes was thereafter transferred to Christiana Hospital.

31. The ER referral completed by FCM and/or DOC personnel relating to the transfer of inmate Christopher Barkes to Christiana Hospital expressly noted that Mr. Barkes had a history of bipolar disorder.

32. Christopher Barkes was pronounced dead in Christiana Hospital on November 14, 2004.

### **COUNT I**

#### **Violation of Civil Rights under Color of State Law, 42 U.S.C. § 1983 – Cruel and Unusual Punishment (by Karen Barkes as Administratrix against all individual defendants and FCM)**

33. Paragraphs 1 to 32 are restated as if more fully set forth herein.

34. The vulnerability of Christopher Barkes to suicide constituted a serious medical need of which defendants knew or should have known, and the actions and/or inactions of defendants, under color of state law, in addressing or failing to address that need, constituted deliberate indifference which could be expected to lead to substantial and unnecessary suffering, injury, and/or death, and which did in fact lead to the death of Mr. Barkes.

35. As a result of the wrongful actions of the defendants, Mr. Barkes suffered attendant physical injuries, mental anguish, pain and suffering, and death, and was deprived of his right to life and his right to be free from cruel and unusual punishment, for which plaintiff Karen Barkes as Administratrix now seeks compensation.

**COUNT II**

**Violation of Civil Rights under Color of State Law, 42 U.S.C. § 1983 –  
Failure to train and/or maintenance of wrongful customs, practices and policies  
(by Karen Barkes as Administratrix against FCM as a person and as a state actor, and  
against the individual FCM defendants)**

36. Paragraphs 1-35 are restated as if more fully set forth herein.

37. In performing its medical services for the DOC, FCM and the individual FCM defendants were state actors performing state functions under color of state law.

38. The death of Christopher Barkes was the direct result of the customs, practices, policies and procedures of FCM and the individual FCM defendants, including but not limited to: a failure to properly train and supervise FCM personnel so as to properly recognize suicidal inmates and how to properly care for inmates identified as making previous attempts on their life, and/or a failure to institute appropriate procedures for the timely transmission of important medical information to appropriate personnel.

39. The aforesaid actions of FCM and the individual FCM defendants amounts to deliberate indifference to the rights of inmates, including the rights of Mr. Barkes.

40. As a result of the wrongful actions of the defendants, Mr. Barkes suffered attendant physical injuries, mental anguish, pain and suffering, and death, and was deprived of his right to life and his right to be free from cruel and unusual punishment, for which plaintiff Karen Barkes as Administratrix now seeks compensation.

**COUNT III**

**Violation of Civil Rights under Color of State Law, 42 U.S.C. § 1983 – Failure to train and/or maintenance of wrongful customs, practices and policies (by Karen Barkes as Administratrix against the State of Delaware Department of Corrections and the individual defendant employees of the DOC)**

41. Paragraphs 1 to 40 are restated as if more fully set forth herein.

42. The death of Christopher Barkes was the direct result of the customs, practices, policies and procedures of defendant Stanley Taylor, defendant Raphael Williams, the individual DOC defendants, and the defendant State of Delaware Department of Correction, including but not limited to: a failure to properly train and supervise DOC personnel so as to properly recognize suicidal inmates and how to properly care for inmates identified as making previous attempts on their life, and/or a failure to institute appropriate procedures for the timely transmission of important medical information to appropriate personnel.

43. The aforesaid actions of defendants constitute deliberate indifference to the rights of inmates who come into contact with employees of the DOC and FCM, including the rights of Mr. Barkes.

44. As a direct and proximate result of the actions of the Defendants, Christopher Barkes suffered attendant physical injuries, mental anguish, pain and suffering, and death, and was deprived of his right to life and his right to be free from cruel and unusual punishment, for which plaintiff Karen Barkes as Administratrix now seeks compensation.

**COUNT IV**

**Wrongful Death under 10 Del. C. § 3724 (by Karen Barkes individually and Tina Grossman as next friend of Alexandra and Brittany Barkes, against FCM and the individual defendants)**

45. Paragraphs 1-44 are restated as if more fully set forth herein.



46. The aforesaid actions of the defendants caused the wrongful death of Christopher Barkes.

47. Plaintiffs are authorized to recover for the damages they have suffered as a result of the wrongful death of Christopher Barkes pursuant to the terms of 10 Del. C. § 3724, and they have suffered severe damages as identified thereunder, including but not limited to the loss of companionship and support of their husband and/or father, Christopher Barkes, with attendant and severe emotional anguish.

#### **COUNT V**

#### **Survival action under 10 Del. C. § 3701 for medical malpractice (by Karen Barkes as Administratrix against FCM and the individual FCM defendants)**

48. Paragraphs 1-44 are restated as if more fully set forth herein.

49. The aforesaid actions of the defendants constituted medical malpractice, causing great pain and suffering, physical injury, and death to Christopher Barkes.

50. Plaintiff Karen Barkes as Administratrix is authorized to recover for the damages suffered by Christopher Barkes as a result of the medical malpractice of the defendants, pursuant to 10 Del. C. § 3701.

**WHEREFORE**, plaintiffs demand that judgment be entered in their favor against defendants on the above claims, including awards of compensatory damages, punitive damages, costs of suit, interest, attorneys' fees under 42 U.S.C. § 1988 and any other appropriate or relevant statutory or common law basis, and such other and further relief as this Court may deem appropriate.

MARGOLIS EDELSTEIN

A handwritten signature in black ink, appearing to read 'Jeffrey K. Martin', is written over a horizontal line.

Jeffrey K. Martin, Esquire (#2407)

1509 Gilpin Avenue

Wilmington, Delaware 19806

(302) 777-4680

[jmartin@margolisedelstein.com](mailto:jmartin@margolisedelstein.com)

Attorneys for Plaintiff

DATE: February 16, 2006

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> <u>Karen Barkes et al.</u>	<b>DEFENDANTS</b> <u>First Correctional Medical Inc. et al.</u>
<b>(b)</b> County of Residence of First Listed Plaintiff <u>New Castle</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant <u>Pima County, Arizona</u> (IN U.S. PLAINTIFF CASES ONLY)
<b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) <u>Jeffrey K. Martin (302) 777-4680</u> <u>Margolite Edelstein</u> <u>1509 Gilpin Avenue, Wilmington DE 19806</u>	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: left;">Citizen of This State</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th style="text-align: left;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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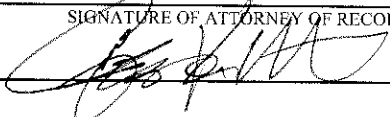
IV. NATURE OF SUIT (Place an "X" in One Box Only)				
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes				

<b>V. ORIGIN</b> (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1	Original Proceeding	<input type="checkbox"/> 2	Removed from State Court	<input type="checkbox"/> 3	Remanded from Appellate Court	<input type="checkbox"/> 4	Reinstated or Reopened
<input type="checkbox"/> 5	Transferred from another district (specify)	<input type="checkbox"/> 6	Multidistrict Litigation	<input type="checkbox"/> 7	Appeal to District Judge from Magistrate Judgment		

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>42 U.S.C. § 1983</u>
	Brief description of cause: <u>Wrongful Death</u>

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____ CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE <u>2/16/06</u>	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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